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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,840	09/01/2006	Charles Nicolas Granville Charlesworth	2253/190	5085

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NIXON PEABODY LLP - PATENT GROUP  
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ROCHESTER, NY 14604

EXAMINER
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PRITCHETT, JOSHUA L

ART UNIT	PAPER NUMBER
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2872

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/575,840	<b>Applicant(s)</b> CHARLESWORTH, CHARLES NICOLAS GRANVILLE	
	<b>Examiner</b> JOSHUA L. PRITCHETT	<b>Art Unit</b> 2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/07</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

This action is in response to Preliminary Amendment filed April 13, 2006. Applicant amended claims 2, 20 and 21 and added claims 24 and 25.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5-8, 16 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Haga (US 2001/0028498).

Regarding claim 1, Haga discloses first and second viewing passages (Fig. 1) each passage having a main body and an eyepiece assembly at one end thereof (Fig. 1) the passages and/or eyepiece assemblies selectively movable to allow positional adjustment to suit interocular distance (para. 0031; Fig. 1) and characterized in that the viewing device includes at least one imaging device (230) to allow the selective capture and/or storage of data representing the images viewable through the first and/or second passages (Fig. 3).

Regarding claim 5, Haga discloses the main bodies of the first and second viewing passages are provided as a single unit (fig. 1).

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Regarding claim 6, Haga discloses the at least one imaging device is fixedly positioned with respect to the main bodies of the first and/or second passages (Fig. 3).

Regarding claim 7, Haga discloses the viewing device includes one or more displays (260) to display the captured image (Fig. 3).

Regarding claim 8, Haga discloses the viewing device include one or more reflective surfaces for guiding light through the main body of each passage to the imaging device (Fig. 3).

Regarding claim 16, Haga discloses first and second viewing passages (Fig. 1) each passage having a main body and an eyepiece assembly at one end thereof (Fig. 1) the passages and/or eyepiece assemblies selectively movable to allow positional adjustment to suit interocular distance (para. 0031; Fig. 1) and characterized in that the viewing device includes at least one imaging device (230) to allow the selective capture and/or storage of data representing the images viewable through the first and/or second passages (Fig. 3) and the eyepiece assemblies are adjustable independently of their respective main bodies of the first and second viewing passages and the at least one imaging device (Fig. 3).

Regarding claim 22, Haga discloses a set of binoculars including first and second viewing passages connected by two or more pivoting joints and imaging devices mounted in or on the binoculars characterized in that movement of the passage for interocular spacing adjustment result in no change to the orientation of the imaging devices (Figs. 1 and 3).

***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 9-15, 21, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haga (US 2001/0028498) in view of Tsukamoto (JP 11-064741).

Regarding claims 2 and 23, Haga teaches the invention as claimed including the passages being selectively movable about a pivot axis (para. 0031; Fig. 1) but lacks reference to the positioning of the imaging device. Tsukamoto teaches the use of an imaging device positioned to receive light in an axis perpendicular to the pivot axis (Fig. 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Haga invention include the positioning of the imaging device for the purpose of having the recorded image include the same zoom as the viewed image.

Regarding claims 3, 11 and 12, Haga teaches the invention as claimed but lacks reference to guiding light from the viewing passage. Tsukamoto teaches the imaging device receives light from one of the viewing passages (Fig. 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Haga invention include the positioning of the imaging device for the purpose of having the recorded image include the same zoom as the viewed image.

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Regarding claim 4, Haga teaches the invention as claimed but lacks reference to the adjustable reflective surfaces. Tsukamoto teaches the use of adjustable reflective surfaces to allow user selection of the light between an eyepiece and the imaging device (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Haga invention include the positioning of the imaging device for the purpose of having the recorded image include the same zoom as the viewed image.

Regarding claims 9 and 10, Haga teaches the invention as claimed but lacks reference to reflective surfaces in series. Tsukamoto teaches the sue of reflective surface in series (Fig. 1). Tsukamoto teaches the reflective surfaces mounted in the fixed portion of the passage (Fig. 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Haga invention include the reflectors in series for the purpose of erecting the image viewed by the observer.

Regarding claims 13-15, 21 and 24, Haga teaches the invention as claimed but lacks reference to the capturing method claimed. Tsukamoto teaches the viewing device is provided with an actuation means to allow the imaging device to capture images and/or video (abstract). Tsukamoto teaches the actuation means moves a mirror from a first position to a second position and then initiates capture (abstract). Tsukamoto teaches the mirror moves back to the first position when actuation means is released (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Haga invention include the actuation means of Tsukamoto to allow the user to capture a desired image without prolonged interruption of the observes view of the object.

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Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haga (US 2001/0028498) in view of Takano (US 2002/0085275).

Haga teaches first and second viewing passages (Fig. 1) each passage having a main body and an eyepiece assembly at one end thereof (Fig. 1) the passages and/or eyepiece assemblies selectively movable to allow positional adjustment to suit interocular distance (para. 0031; Fig. 1) and characterized in that the viewing device includes at least one imaging device (230) to allow the selective capture and/or storage of data representing the images viewable through the first and/or second passages (Fig. 3). Haga lacks reference to means for control. Takano teaches means for detecting angles of the passages and control means for the imaging device indicative of the orientation detected (para. 0062). Takano further teaches the control means adjusts the orientation of the image and/or imaging device (para. 0062). Takano further teaches the orientation is adjusted to ensure the images remain in substantial alignment with a horizontal or other predetermined user selected plane (para. 0062). Takano further teaches the control means includes gearing arrangements (para. 0079). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Haga invention include the control means of Takano for the purpose of obtaining a clear image of the object viewed with minimal blurring.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haga (US 2001/0028498) in view of Takano (US 2002/0085275) as applied to claim 17 above, and further in view of Tsukamoto (JP 11-064741).

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Haga in combination with Takano teaches the invention as claimed but lacks reference to the capturing method claimed. Tsukamoto teaches the viewing device is provided with an actuation means to allow the imaging device to capture images and/or video (abstract). Tsukamoto teaches the actuation means moves a mirror from a first position to a second position and then initiates capture (abstract). Tsukamoto teaches the mirror moves back to the first position when actuation means is released (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the Haga in combination with Takano invention include the actuation means of Tsukamoto to allow the user to capture a desired image without prolonged interruption of the observes view of the object.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA L. PRITCHETT whose telephone number is (571)272-2318. The examiner can normally be reached on Monday - Friday 7:00 - 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephone B. Allen can be reached on 571-272-2434. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joshua L Pritchett/  
Primary Examiner  
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